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December 5, 2005

VIA E-MAIL: khan461@ecy.wa.gov

Kevin Hancock
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Re: Comments on the Revised Draft CAFO General Permit

Dear Mr. Hancock:

We submit the following comments to the Washington State Department of Ecology on behalf of Puget Soundkeeper Alliance and Waste Action Project. These comments address the revised draft Concentrated Animal Feeding Operation (CAFO) NPDES and State Waste Discharge General Permit, dated October 19, 2005. These comments supplement our comments previously submitted on January 28, 2005. Our previous comments are generally not repeated here, but remain effective to the extent not already addressed in the revised draft.

The revised draft CAFO Permit reflects considerable work and includes numerous improvements over previous drafts. Despite these improvements, the revised draft Permit still contains several ambiguities, too many potential loopholes, and several typos. We request, and look forward to, additional improvements in the CAFO Permit. The comments are presented below in sequential order, following page number and permit section designations.

Page 3, Definition 3 -- (grammatical) We suggest revising the final phrase of the third bulleted item to read, "and the facility has been designated as a CAFO." This language conforms with the following definition.

Page 3, Definition 4 -- We suggest revising the defined term and definition to state, "'Designated as a CAFO' means the department has determined . . ." Also, the word "format" should be changed to "formal".

Page 3, Definition 6 -- Permit Condition S3.A.1 confirms that "equivalent BMPs" must be approved by the Department of Agriculture. Accordingly, we suggest revising the definition to clarify by whom the determination of equivalence is made. Revise the final sentence of the definition to state, following the comma, that "the Department of

Agriculture shall consider all available data." In addition, we suggest spelling out the acronyms NRCS and FOTG in the definition.

Page 5, Definition 20 -- because "waters of the state" include groundwater (*see*, WAC 173-201A-020, the definition in the CAFO permit should clarify that, "'Waters of the state' as used in this permit means . . . "

Page 5, Condition S1.A.1 -- This condition should be revised to close a loophole, by adding the phrase "from a storm qualifying as or exceeding the design storm" after the second "precipitation" in the final phrase of the sentence. The revised language would prohibit all discharges to surface waters that are not caused by precipitation from a storm qualifying as or exceeding the design storm.

Page 6, Condition S1.A.2 -- This condition should be revised to close a loophole, by adding the phrase "from a storm qualifying as or exceeding the design storm" after the second "precipitation" in the final phrase of the sentence. The revised language would prohibit all discharges to surface waters that are not caused by precipitation from a storm qualifying as or exceeding the design storm.

Page 7, Condition S1.D.4 (Mortality handling) includes an unclear reference to § 412.31(a)(2). Please clarify to which regulation or statute this section refers.

Page 8, Condition S2.B.1.b's reference to a 30 day public comment period should be revised to an "appeal period" and the citation should be changed to WAC 173-226-130(4).

Page 10, Condition S3.A2.f -- the word "control" should be deleted and replaced with "prevent" in order to clarify the prohibition on discharges to surface waters.

Page 12, Condition S3.C -- The reference to "certification" should be deleted, since the provisions for NMP certification formerly included in the definition of "Nutrient Management Plan" have been deleted. As presently drafted, the reference to "certification" appears to create an impermissible compliance schedule delaying the obligation to comply with the NMP.

Page 23, Appendix I -- the deadline for seeking NPDES permit coverage applicable to "CAFOs with any other discharge" should be clarified to state a date certain (e.g., "as soon as possible, but in no event later than [x]").

We look forward to reviewing the Final Permit and Fact Sheet. Please notify the undersigned when the Permit issues.

Very truly yours,

Smith & Lowney, P.L.L.C.

By: _____
Richard A. Poulin
Of Counsel